

State of California
AIR RESOURCES BOARD

Final Statement of Reasons for Rulemaking
Including Summary of Comments and Agency Responses

**HEARING TO CONSIDER AMENDMENTS TO THE CLEAN FUELS
REGULATIONS REGARDING CLEAN FUEL OUTLETS**

Public Hearing Date: July 22, 1999
Agenda Item No.: 99-6-3

I. GENERAL

This rulemaking was initiated by the publication on June 4, 1999 of a notice for a July 22, 1999 public hearing to consider amendments to the California Clean Fuel Regulations. A Staff Report: Initial Statement of Reasons for Proposed Rulemaking was also made available for public review and comment starting June 4, 1999. The Staff Report, which is incorporated by reference herein, contained the text of the regulatory amendments as proposed by staff, along with an extensive description of the rationale for the proposal.

The Clean Fuels Regulations are contained in sections 2300 – 2317, title 13, California Code of Regulations (CCR), and are designed to ensure that clean alternative fuels used to certify low-emission vehicles (LEVs) are publicly available. The staff proposal consisted of numerous amendments to sections 2300 – 2317, and adoption of new sections 2303.5 and 2311.5, title 13, CCR. These amendments and new sections would remove obsolete provisions, modify the way the number of required clean fuel outlets would be determined, and streamline notification of affected parties. At the July 22, 1999 hearing, the Board approved resolution 99-32, which adopted the amendments to sections 2300 – 2317 and new sections 2303.5 and 2311.5, title 13, CCR, as originally proposed, with no modifications.

The Final Regulation Order attached to the Form 400 Facesheet contains a number of nonsubstantial changes from the Proposed Regulation Order attached to the Staff Report. The text of the Proposed Regulation Order was prepared from a copy of the original Clean Fuel regulations approved by OAL August 30, 1991. Unfortunately, the regulations as published in Barclays California Code of Regulations contained a number of errors. Corrections of these Barclays errors are shown in underline and strikeout in the following places: A minor typographical error in section 2300(a)(27); the capitalization in the heading of sections 2301 and in the formula contained in section 2304(a)(1); the Authority and Reference citation in sections 2306 and 2307, and the word "Starting" in the heading for section 2302 does not currently show in Barclays so we kept it out of the final regulation order.

In addition, the ARB has made the following nonsubstantial corrections to the text: The Authority and Reference citations for all sections replaced the underlined text with *italicized* for all sections; the capitalization in the heading of sections 2303.5 and 2314; section 2306 had a minor typographical error, and the last section was proposed as the adoption of section 2317 and should have been section 2318.

Fiscal Impacts. The Board has determined that the adoption of the amendments to sections 2300 – 2317, and adoption of new sections 2303.5 and 2311.5, title 13, CCR, will not result in a mandate to any local agency or school district, the costs of which are reimbursable by the State pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code.

Consideration of Alternatives. The Board has determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the approved amendments were proposed or would be as effective and less burdensome to affected private persons than the action taken by the Board.

II. SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSES

During the 45-day public comment period on the proposed amendments, the Board received written comments from the South Coast Air Quality Management District (SCAQMD), the California Energy Commission (CEC), the American Methanol Institute (AMI), the Western States Petroleum Association (WSPA), the Methanex Corporation (Methanex), and the California Natural Gas Vehicle Coalition (CNGVC). At the hearing, oral testimony was received from the Union of Concerned Scientists (UCS) and WSPA. Set forth below is a summary of each objection or recommendation specifically directed at the proposed amendments or to the procedures followed by the ARB in proposing or adopting the amendments, together with the agency response. Expressions of support for the amendments from the SCAQMD and the CEC, and support by AMI, WSPA and Methanex for several elements of the amendments, are not separately summarized.

1. Comment: We continue to consider the 75 percent discount for fleet vehicles for purposes of the vehicle trigger to be too steep. In 1994, the U.S. Energy Information Administration (U.S. EIA) released a report “Profile of Motor Vehicle Fleets in Atlanta” that reviewed the fuel purchase practices of private fleets in the metropolitan area. A follow-on profile done in Denver in 1995 (“Denver Clean-City Fleets Survey”) included local government as well as private fleets. These surveys show that one-half to two-thirds of all fleet fuel purchases are completed at public retail fueling facilities. (AMI)

Agency Response: While the studies cited by the commenter show a higher level of fleet fuel purchases from public retail fueling facilities, it is important to note that these fleet fueling patterns are for gasoline and diesel powered vehicles, not alternative fueled vehicles.

Staff believes that the high level of use of public fueling facilities for gasoline and diesel powered fleet vehicles is due mainly to the extensive existing infrastructure for these fuels. With this infrastructure in place, there is little incentive for private fleet operators to expend the capital and maintenance costs associated with developing their own on-site fueling facilities. Thus, they are more apt to use this existing infrastructure than develop their own.

In comparison, there is a limited public infrastructure for alternative fuels and it is not reasonable to assume that the fleet fueling practices for alternative fuel vehicles would follow the same trend. In California, public alternative fueling facilities only account for 5 to 30 percent of the total alternative fuel locations. As a result, the ability of fleet operators to utilize these facilities is limited. Therefore, discounting fleet operated vehicles 75 percent towards the vehicle trigger is a reasonable method to account for expected limited use by most fleets of the small number of public alternative fueling facilities. But to the extent that staff determines that fleet vehicles *do* utilize public facilities greater than 25 percent of the time, the amendments authorize the Executive Officer to reduce the 75 percent fleet discount to reflect any increases in the utilization of public fueling facilities by fleets. (sections 2303.5(a)(2) and 2304(a)(3).)

2. Comment: The Staff Report states that the Department of Energy (DOE) study appears to include card key-type facilities as “public” stations, leading staff to conclude that public fleet use of actual retail public stations is “closer to 5 to 30 percent.” We respectfully disagree with this conclusion. (AMI)

Response: The commenter has misinterpreted the conclusions reached in the Staff Report. The Staff Report concluded that, while the information contained in the DOE study “Perspectives on AFVs: State and City Government Fleet Manager Survey” showed alternative fuel fleets used public fueling facilities about 50% of the time, the definition of a public fueling facility used in the DOE study was different than that used in the Clean Fuels Regulations. The definition of public facility used in the DOE study is similar to that used in industry, which includes both retail facilities and those that use card-key types of arrangements. The definition of a public facility (specifically, a “retail clean fuel outlet”) in the Clean Fuels Regulations only includes retail facilities, and does not include card-key type facilities. As a result, after analyzing the existing California infrastructure to determine the percentage of facilities that are public as defined in the Clean Fuels Regulations, staff determined that fleet vehicles will likely utilize public facilities in about the same percentages that these public facilities comprise within the marketplace, which is 5 to 30 percent.

3. Comment: The U.S. EIA surveys present a clearer rationale for discounting the role of fleet vehicles. Based on this information, we suggest that a 50% discount for fleet vehicles would be a conservative valuation of what is happening in the market place today. (AMI)

Agency Response: See the response to comment 1.

4. Comment: The Staff Report's reliance on a DOE-sponsored survey of state and city government fleet managers fails to consider how the practices of private fleet operators – a much larger and more diverse population – may differ from their public counterparts. (AMI)

Agency Response: At the time of this rulemaking, the DOE study was the most comprehensive study on the fueling patterns of alternative fuel vehicles in fleet operation. Other comparable studies of fleet fueling patterns have focused on the fueling patterns of gasoline and diesel fueled fleet vehicles. As stated in the response to comment 1, staff does not believe alternative fuel fleet fueling patterns will necessarily follow the same trends as for gasoline and diesel fuel. To the extent that additional studies and information on the fleet fueling patterns of alternative fuel vehicles become available, the Executive Officer will consider this information when determining if 75 percent is the appropriate discount for fleet vehicles in the vehicle trigger, or if the discount should be some lower value.

5. Comment: The trigger regulations should include some flexibility for the discount formula to account for the marketing tactics used by the automakers. The Board also should maintain some caution that a discount that is too steep for fleet vehicles may skew market forces to focus solely on fleets rather than the broader consumer market. (AMI)

Agency Response: As stated in the response to comment 1, the amendments contain provisions allowing the Executive Officer to reduce the fleet discount in the vehicle trigger calculation from 75 percent if information indicates that the discount should be less. This should provide adequate flexibility within the regulations to account for whatever method automakers choose to utilize to introduce and market their clean fuel LEVs into the California marketplace.

6. Comment: WSPA prefers that these regulations be repealed as there are no air quality benefits credited to a California State Implementation Plan for this regulation, no specific emission benefits can be associated with these regulations, and the regulations have no demonstrated cost-effectiveness. (WSPA)

Agency Response: While the commenter is correct to note that there are no specific emission benefits associated with the regulations, the regulations are an important part of the California LEV Program. When the LEV Program was first adopted in 1990, the Clean Fuels Regulations were also adopted to ensure that clean alternative fuels used to certify LEVs would be publicly available. In order for automakers to confidently produce clean fuel LEVs, a degree of certainty must be present that there will be fuel available for those vehicles. Therefore, while the regulations themselves do not provide any specific emission benefits, they assist automakers in implementing the LEV Program.

The commenter is correct to note that the regulations by themselves have no associated cost-effectiveness. However, during the adoption of the LEV/Clean Fuels Regulations in 1990, the estimated overall cost-effectiveness of the LEV Program included the costs associated with the clean fuels portion of that rulemaking. Therefore, the cost-effectiveness of the LEV Program has already considered the costs associated with the clean fuels provisions. In addition, staff believes that the amendments provide an overall cost-savings to affected parties compared to the original regulations.

7. Comment: WSPA prefers that these regulations be repealed as they are a government mandate and WSPA opposes such mandates. (WSPA)

Agency Response: As stated in response to comment 6, we believe that these regulations are an integral part of the California LEV Program. When developing the amendments to the regulations, staff was unable to identify an alternative method to achieve the same results provided by the amendments approved by the Board.

8. Comment: WSPA proposes and requests that the Board adopt a sunset date of 2006 if the regulation does not trigger the installation of alternative fuel outlets by that year. In our view, any regulation that does not provide benefits within 14 years of adoption is ripe for sunset. (WSPA)

Agency Response: We believe it is appropriate to provide affected parties relief from the requirements when commercial viability of a particular clean fuel has been achieved. As such, the amendments provide that when 10 percent of the retail service stations in the State have made a particular clean fuel available for retail purchase, the requirements to site clean fuel outlets for that particular fuel are sunsetted (new section 2317). Adding a specific sunset date of 2006 for the entire regulatory program at this time would be inappropriate because conditions at that point may be very close to triggering the requirements for clean fuel outlets. The staff will continue to monitor the program, and can recommend repeal in that becomes appropriate based on future conditions.

9. Comment: With respect to the vehicle trigger, we feel that a number somewhat lower than the 20,000 figure could be easily justified. Car manufacturers will likely need to build new assembly lines for fuel cell vehicles and this should provide a good assurance of future vehicle production levels. (Methanex)

Agency Response: When the Board adopted the Clean Fuels Regulations in 1990, it chose 20,000 as the vehicle trigger since number reflected a clean fuel throughput volume that allowed for a reasonable return on investment for affected parties. This rationale is still valid.

We do not believe that automakers will make vehicle development decisions based on the vehicle trigger contained in the regulations. Development of advanced technology vehicles will occur outside of these regulations, and will be driven by the needs of automakers to meet increasingly stringent fleet average non-methane organic gas (NMOG) standards, as well as meeting the zero-emission vehicle (ZEV) mandate beginning in 2003.

10. Comment: There appears to be strong evidence that the 75% discount for fleet vehicles is too high. (Methanex)

Agency Response: See the response to comment 1.

11. Comment: We are supportive of reducing the average throughput per retail site from 600,000 gasoline equivalent gallons (GEG) to 300,000 gegs. However, we feel that a further reduction could also be justified, based on the fact that average throughput levels per station are slightly more than 1 million gegs, and that this is distributed through a number of dispensers. Since the alternative fuels will likely be made available at only one pump per retail site, this 300,000 geg threshold seems a bit high. (Methanex)

Agency Response: In developing the proposed amendments, staff reviewed the estimated station throughput to determine the most appropriate number for the initial phase of the regulations' implementation. Based on the number of gasoline powered vehicles and retail gasoline service stations in California, and using a reasonable estimate of 10 gasoline dispensers per service station, staff estimates the number of gasoline vehicles per dispenser to be about 200. Performing a similar calculation on the maximum amount of clean fuel needed for 20,000 non-fleet clean fuel LEVs, staff calculates this ratio to be about 270 clean fuel vehicles per clean fuel dispenser (assuming one clean fuel dispenser per clean fuel outlet). Based on the higher cost of supplying clean fuels, and the capital recovery costs associated with installation of the clean fuel dispensing equipment, using 300,000 geg during the programs initial implementation is a reasonable approach.

12. Comment: We believe that the Board should monitor the introduction of alternative fuel vehicles, especially in terms of the fuel cell program and any regional distribution of alternative fuel vehicles, and that the Board should adjust the level of the 20,000 vehicle trigger if appropriate. (UCS)

Agency Response: Staff plans to closely follow the introduction of clean fuel and advanced technology vehicles into the California marketplace. Staff will work closely with automakers to ensure an accurate accounting of vehicle production, and will monitor the regional distribution of these vehicles. Staff will consider proposing changes to the 20,000 vehicle trigger if it becomes apparent that a regional approach would provide a more effective method for siting clean fuel outlets and meeting fueling demands.

13. Comment: We believe that the staff should monitor and report back to the Board on an annual basis to see if the 20,000 vehicle trigger is still appropriate. (UCS)

Agency Response: As stated in response to comment 12, staff will closely monitor the introduction of clean fuel and advanced technology vehicles into the California marketplace, and consider changes to the 20,000 vehicle trigger as they are needed. However, it is not necessary to require annual reports to the Board on the appropriateness of the 20,000 vehicle trigger, as a more complete assessment of the clean fuel infrastructure needs for advanced

technology vehicles is considered as part of the bi-annual report to the Board on the status of the LEV Program.

14. Comment: It would be in the best interest of the breathing public if certain uses of fleet vehicles (e.g., alternative-fuel LEVs used in rental fleets for general public use) were fostered, and therefore not discounted from the vehicle trigger. (CNGVC)

Agency Response: As stated in response to comment 1, the amendments allow the Executive Officer to reduce the fleet discount in the vehicle trigger calculation from 75 percent if information indicates that the discount should be less. To the extent that fleet operated vehicles (such as those used for general public use in rental fleets, or in other fleet applications where the use of public fueling facilities is likely) will use retail clean fuel outlets, the Executive Officer would consider reducing the fleet discount as appropriate.